Supreme Court, U.S.
FILED
NOV 12 1999
CLERK

99-624

No.

In The

Supreme Court of the United States

October Term, 1999

GERARD A. CORSINI,

Petitioner,

v.

U-HAUL INTERNATIONAL, INC., *et al.*,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

HARVEY GLADSTEIN
Attorney of Record

GLADSTEIN & ISAAC
Attorneys for Respondents
U-Haul International, Inc.,
U-Haul Co. of New York, Inc.
110 Wall Street
New York, New York 10005
(212) 952-1111

Coonan Press, Inc.
75 Varick Street • New York, NY 10013
(212) 343-0074

12pp

PARTIES TO THE PROCEEDING

Parties to the proceeding include Gerard Corsini, Petitioner, U-Haul International Inc., formerly U-Haul Co. of Metro New York, U-Haul Co. of New York, Inc., Amerco Inc. and Shirley Jackson.

TABLE OF CONTENTS

Page

Parties to the proceeding i

Table of contents ii

Table of authorities iii

Statement of the case 1

A. Mr. Corsini's outrageous actions, which resulted in the dismissal of his case 2

B. Corsini II 5

C. Corsini III 6

D. Mr. Corsini's conduct during and after the appeals 6

Reasons for denying the writ 7

Conclusion 9

TABLE OF AUTHORITIES

Page

Cases Cited:

Citnalta v. Caristo Assoc. Electric Co., 244 AD2d 252-4 [1st Dept. 1997] 6

Corsini v. U-Haul International, 212 AD2d 288 [1st Dept. 1995], *lv. den.* 87 NY2d 964 [1996] 1

Corsini v. U-Haul International, 234 AD2d 107 [1st Dept. 1996], *lv. den.* 90 NY2d 978 [1997] 1

Corsini v. U-Haul Co. of N.Y.,257 AD2d 441 [1st Dept. 1999], *lv. den.* 93 NY2d 812 [1999] 1

Cover v. Cohen, 61 NY2d 261,277-8 [1984] 7

Heller v. Century Maxim 2

Hovey v. Elliot, 167 US 409 [1897] 7

Insurance Corp. of Ireland v. Copagnie Des Bauxites de Guinee, 456 US 694 [1982] 7

Miller v. DeBuono, 90 NY2d 783,794 [1997] 6

Ohearn v. Ohearn, 55 Ad2d 7-8 [3d Dept. 1976] 6

Societe International v. Rogers, 357 US 197 [1958] . . . 7

STATEMENT OF THE CASE

This is a petition by the Petitioner, Gerard A. Corsini ("Mr. Corsini"), an attorney who allegedly practiced with the "best and the brightest", who seeks to overturn three separate orders of the Appellate Division, First Department which resulted in the dismissal of his case.

In his first appeal (*Corsini v. U-Haul International*, 212 AD2d 288 [1st Dept. 1995], *lv. den.* 87 NY2d 964 [1996]), the First Department, in a landmark decision, held that the trial court abused its discretion in failing to dismiss Mr. Corsini's complaint, based upon his incivil and outrageous conduct before, during and after a deposition wherein he attacked defendant's trial counsel, Allen H. Isaac, Esq., mercilessly, viciously, unethically and improperly.

In the second appeal (*Corsini v. U-Haul International*, 234 AD2d 107 [1st Dept. 1996], *lv. den.* 90 NY2d 978 [1997]), the Appellate Division held that defendant Amerco, the parent of one of the U-Haul defendants, could not be sued by plaintiff based upon the dismissal of the complaint in the first appeal, stating: "The dismissal of the first action was in the nature of a default, and thus estops plaintiff from reasserting that claim in this or any other action."

In the third appeal (*Corsini v. U-Haul Co. of N.Y.*, 257 AD2d 441 [1st Dept. 1999], *lv. den.* 93 NY2d 812 [1999]), the First Department held that the trial court's granting of the motion to amend the judgment was proper, because the trial court "correctly noted that this Court's directed dismissal of the action as against defendant-respondent on a prior appeal" holding that the defendant U-

Haul Co. of New York Inc. was an intended beneficiary of the dismissal of the complaint in the first cause of action.[1]

As detailed below, it is respectfully submitted that the Appellate Division's decisions on the three appeals were indisputably correct, were not violative of Mr. Corsini's constitutional rights, and sprang from his own outrageous behavior, which is like nothing seen heretofore in a member of the New York Bar.

A. Mr. Corsini's outrageous actions, which resulted in the dismissal of his case.

Mr. Corsini represented himself in an action brought against U-Haul International Inc., U-Haul Co. of New York Inc., formerly U-Haul Co. of Metro New York Inc. (collectively, the "U-Haul defendants"), and Shelly Jackson, as well as Edward Villavicencio. He testified that he "practiced with the best and the brightest" and was "admitted in three states" and worked with the "second largest law firm in America" (344).[2] Yet the actions he engaged in can only be described as unbelievable.

First, he stalked Mr. Isaac, counsel for the U-Haul defendants, while Mr. Isaac was trying a case called *Heller v. Century Maxim* (11, 68), ostensibly in order to determine when the case was completed so that Mr. Corsini could schedule his deposition. The *Heller* case was ultimately

---

[1] The first appeal will be known as Corsini I; the second as Corsini II; the third as Corsini III.

[2] Numbers in parentheses refer to pages of the record on appeal in the case under consideration.

completed, and Mr. Corsini appeared for a deposition on December 20, 1993 (74-292). It is safe to say that no member of this Court has ever seen or heard of a deposition such as this one.

Mr. Corsini's objectionable remarks and the instances of his reprehensible conduct are literally countless. The briefs and record are presumably before the Court. His answers were designed to thwart discovery and impair the entire litigation process. He stated *on the record* that Mr. Isaac was "unethical and dishonest" and a "hired gun" of his client (118), and that the U-Haul defendants "promised to find some little weasel like you and that's exactly what they have done." He described Mr. Isaac as "despicable" and stated that he practiced "at the lowest level of the profession"; he stated that Mr. Isaac was "in the sewer" and in the "basement" and was a "paid person to do the bidding of your client" (118). He accused U-Haul's president of being involved in a murder (119), then began "screaming at the top of his lungs" (119). He stated that Mr. Isaac "lied" and made "false representations." He also called Mr. Isaac a "slimeball" who was "blighting the legal profession", and said that "the shoe fits perfectly", meaning that U-Haul was a dishonest company (119, 127-28). He called Mr. Isaac "sleazy, slimy" and "despicable" (145-46), and also insulted him based upon his Jewish heritage, although he then attempted to deny having done so (128-29); he called Mr. Isaac "incompetent" and "obnoxious" (165). In response to a question regarding his case, he called Mr. Isaac a "jerk" and then spelled the word for the record (177). He stated that he was "ashamed as an attorney to practice in the same bar that you practice at" (195). He refused to answer Mr. Isaac's questions and then explained: "You do not know how to ask a question properly, but when you do it in a malicious

purpose to ask it in a tone that you use, the manner you use and the gesture you use, that is what I object to." He accused Mr. Isaac and co-counsel of conspiring to obstruct justice, and of hiding witness (230-45).

All this took place during a deposition where Mr. Isaac was simply seeking answers to questions about the alleged assault upon Mr. Corsini.

When Mr. Corsini's abusive conduct could no longer be tolerated, Mr. Isaac suspended the deposition and told Mr. Corsini to leave the office (289-90).

In a hearing before the Supreme Court, New York County on March 17, 1994, Mr. Corsini continued his insults (33-44); he had two altercations with Justice Beverly S. Cohen, once interrupting her during a colloquy with Mr. Isaac (25-29), and later loudly commanding her not to "roll her eyes" (44).

A full and senior panel of the Appellate Division, First Department read the briefs and heard oral argument. In a landmark decision in Corsini I, Justice Ernst Rosenberger held that Mr. Corsini's conduct was so outrageous that the only appropriate sanction was dismissal of his complaint. After quoting some of Mr. Corsini's statements, Justice Rosenberger observed: "It is difficult to find one among the 217 pages of deposition which does not contain wilful evasion, gratuitous insult, argumentative response or patent rudeness from the plaintiff", and that Mr. Corsini continued his atrocious conduct in front of the trial judge, who had to endure his diatribes. Justice Rosenberger stated:

> **Discovery abuse, here in the form of extreme incivility by an attorney with respect to an adversary, prior to and during a deposition, is not to be tolerated. Although the deposition was not held in a courtroom, and there was no judge present, it was, nonetheless, part of a judicial proceeding in the Supreme Court. A lawyer's duty to refrain from uncivil and abusive behavior is not diminished because the site of the proceeding is a deposition room or law office rather than a courtroom.**

Plaintiff's pro se status could not save him, since he was "an experienced attorney and member of the Bar in at least two other states" who claimed to have practiced "in one of New York's leading law firms" and who stated that he worked with the "best and the brightest." Accordingly, "Given the plaintiff's background and experience, we find no excuse for his outrageous behavior, and hold that the sanction of dismissal is commensurate with the misconduct."

B. Corsini II.

Mr. Corsini had also brought an action against Amerco Inc. Counsel for the U-Haul defendants and, at the time, Shelly Jackson (Ms. Jackson and Mr. Villavicencio are now represented by separate counsel), moved to dismiss this claim on the basis of the basis of the dismissal of the complaint in Corsini I, arguing that collateral estoppel and *res judicata* prevented the maintenance of the suit. The trial court agreed and dismissed the complaint. The First Department affirmed, stating:

"The dismissal of the first action was in the nature of a default, and thus estops plaintiff from reasserting that claim in this or any other action."

C. Corsini III.

In the third appeal, U-Haul Co. of New York, Inc., listed as an appellant and represented by the law firm of Gladstein & Isaac, had not been directly named as a party defendant in the original notice of appeal filed by the U-Haul defendants, solely through a typographical error. It was clear to the Appellate Division and to all the parties that Gladstein & Isaac was representing all the U-Haul defendants. However, the clerk refused to enter a judgment for U-Haul Co. of New York Inc., and a motion was made to include that defendant as a party entitled to the benefit of the dismissal in Corsini I. The trial court granted the motion, and the Appellate Division affirmed, finding that all the U-Haul defendants were covered by the decision in Corsini I, and that the failure to name one of the U-Haul defendants specifically in a portion of the notice of appeal was not fatal. See, *Miller v. DeBuono*, 90 NY2d 783,794 [1997]; *Cover v. Cohen*, 61 NY2d 261, 277-8 [1984]; *Citnalta v. Caristo Assoc. Electric Co.*, 244 AD2d 252-4 [1st Dept. 1997]; *Ohearn v. Ohearn*, 55 AD2d 7-8 [3d Dept. 1976].

D. Mr. Corsini's conduct during and after the appeals.

Mr. Corsini brought a federal civil rights complaint against the First Department, accusing it of bias, and continued with his outrageous attacks against the justices of the Appellate Division, blaming them for disciplinary proceedings instituted against him based on statements he

made on the record (Petition, pp. 15-24). He continues this conduct in his most recent writings.

REASONS FOR DENYING THE WRIT

Although Mr. Corsini raises constitutional issues, asserting that the dismissal of his case violated his due process rights (See, *Insurance Corp. of Ireland v. Copagnie Des Bauxites de Guinee*, 456 US 694 [1982]; *Societe Internationale v. Rogers*, 357 US 197 [1958]; *Hovey v. Elliot*, 167 US 409 [1897]), in that his case was dismissed "without affording a party an opportunity for a hearing on the merits of his case" (Writ, pp. 21-22), this record does not support that claim. Mr. Corsini's case was dismissed because of his own outrageous conduct. He was given three hearings, and all resulted in a resounding defeat. His intemperate behavior, his unethical conduct, and his blatant attempt to thwart discovery by engaging in abusive and harassing tactics, led to the dismissal of his case.

The fact that Mr. Corsini was an attorney licensed to practice law, who boasted of his excellence, actually hurt his cause. Such an individual can be presumed to know the importance of discovery and of proper demeanor. Mr. Corsini's conduct at his deposition, the hearing before the trial court, and at the *Heller* trial cannot be blamed on excessive zeal or a temporary loss of control. It was clearly a method he used to thwart discovery by refusing to answer questions and attempting to confuse and intimidate those who questioned him about his case.

We submit that a review of the three appeals and the records demolishes any claim by Mr. Corsini that the decisions of the trial court, Appellate Division and Court of

Appeals deprived him of his due process rights. At least in New York, there has never been a case of an attorney acting as Mr. Corsini has acted. His outrageous conduct, repeated at length, required the dismissal of his case. The punishment was commensurate with the offense. The decisions of the appellate courts were correct. This Court should deny the writ and not afford Mr. Corsini any further review of his claims, which have already been thoroughly aired and properly rejected.

CONCLUSION

For the reasons given above, and for those given in the briefs and records in Corsini I-III, the petition should be denied.

Dated: **New York, New York**
November 11, 1999

Respectfully submitted,

Harvey Gladstein, Esq.

GLADSTEIN & ISAAC ESQS.
Attorneys for Respondents
U-Haul International Inc.,
U-Haul Co. of New York Inc.
(formerly U-Haul Co. of
Metro New York Inc.)
110 Wall Street
New York, NY 10005
212-952-1111